



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 25, 1996

Ms. Jennifer D. Soldano
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-1006

Dear Ms. Soldano:

You seek reconsideration of Open Records Letter No. 96-0637 (1996), in which this office determined that the Texas Open Records Act, Government Code chapter 552, required the Texas Department of Transportation (the "department") to make certain information available to the public. This office assigned your request for reconsideration ID# 40622.

The Texas Department of Transportation (the "department") received two requests for information concerning an automobile accident that occurred on March 5, 1993, in which an individual was killed. The requestor asked for "the name of [the] entity that maintained the traffic signals at the intersection of Research and Fairfield Drive on 3-5-93" and copies of complaints concerning the intersection.

In your original request to this office you claimed that the requested information was excepted from required public disclosure pursuant to section 552.103(a) of the Government Code. In Open Records Letter No. 96-0637 (1996), this office found that "you did not establish the applicability of section 552.103(a)." We concluded that you had not shown that litigation was pending or reasonably anticipated.

In your request for reconsideration, you state that a lawsuit was filed after your original request for a decision. You have submitted the petition in that cause. We note that your original request is dated January 13, 1995. The litigation was filed March 3, 1995, and our decision was issued on April 30, 1996. You did not inform this office concerning the changes in circumstance before our initial ruling.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 638 (1996). It is important to note that the status of the litigation can determine the applicability of section 552.103(a). There are several reasons for this.

First, the exception does not apply when the opposing party to the litigation has already obtained access to the information, through discovery or otherwise. *See* Open Records Decision Nos. 349 (1982) at 2, 320 (1982) at 1. Second, the exception generally does not apply when litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. Finally, unless litigation is pending, the exception does not apply until the controversy giving rise to the litigation has reached the stage at which the potential opposing party begins to take objective steps toward *actually filing* a lawsuit. Open Records Decision No. 638 (1996).

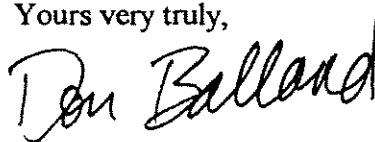
In light of the temporal nature of the applicability of section 552.103(a) and the governmental body's duty to establish the applicability of the exceptions it claims, we believe the act requires a governmental body raising section 552.103(a) to provide this office with information about new and significant developments concerning the anticipated litigation. *Id.* at 3.

Further, we believe that a governmental body must provide to this office these updates concerning the litigation in a timely manner. The legislature, recognizing the value of the timely production of public information and the timely rendition of open records rulings, intended that the open records decision-making process move rapidly. *See* Gov't Code §§ 552.221, .306. Moreover, recent amendments to the act, which became effective September 1, 1995, indicate a strong legislative intent to accelerate the open records decision process. *See* Gov't Code § 552.301. Thus, we believe a governmental body must submit to this office information about a change in the circumstances of the anticipated litigation as soon as possible after the governmental body receives notice of that change. Open Records Decision No. 638 (1996) at 3.

In this instance, suit was filed against the department in March, 1995, and you did not inform this office of that new and significant development until after our April, 1996 ruling. As you did not timely notify this office of the changed circumstances, we decline to reconsider Open Records Letter No. 96-0637 (1996). *See* Open Records Decision No. 473 (1987) (section 552.103 does not provide compelling reason to overcome presumption of openness); Gov't Code § 552.103.

If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 40622

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(w/o enclosures)